



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Interior Planning Associates

File: B-223954

Date: August 22, 1986

DIGEST

1. Protest challenging contracting agency's decision not to extend bid opening date after issuing amendment to invitation for bids is untimely where the protester was aware of the agency's decision before bid opening, but did not file protest until after bid opening.
2. Protest challenging allegedly defective specifications is untimely where not filed before bid opening.
3. Protest challenging awardee's bid as both too high (for failure to reflect a reduction in the scope of effort called for by amendment) and too low (because it is based on inaccurate labor rates) is without merit on its face because (1) protester offers no evidence to support its position that the bid is too high; and (2) there is no legal basis on which to object to below-cost bid.

DECISION

Interior Planning Associates (IPA) protests any award under invitation for bids (IFB) No. DLA500-86-B-1522, issued by the Defense Logistics Agency for workstations. IPA contends that after issuing an amendment to the IFB, the contracting agency improperly failed to extend the bid opening date and, as a result, IPA had insufficient time before bids were due to revise its bid in response to the amendment. We dismiss the protest.

IPA states that amendment No. 2 to the IFB was issued by the contracting agency on July 10, 1986 and was sent to IPA via Federal Express on July 19. The amendment did not extend bid opening, scheduled for July 25 at 10:00 a.m. IPA submitted a bid, but by letter dated July 28, the agency advised IPA that its bid had been received late (specifically, at 10:15 a.m. on July 25) and would not be considered for award.

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IPA's contention is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1986), protests based on alleged improprieties in a solicitation which are apparent before bid opening must be filed before bid opening. Here, IPA received the amendment approximately 1-week before the July 25 bid opening date.^{1/} As a result, IPA knew before bid opening that the bid opening date had not been postponed. Therefore, IPA was required to protest prior to bid opening. Since the protest identified in the solicitation was not filed until August 11, the protest is untimely. R&B Equipment Co., B-219560.2, Sept. 5, 1985, 85-2 CPD ¶ 272. (We point out that on the record before us the agency appears to have acted reasonably since it allowed 14 days for transmittal, consideration and return of the amendment, and IPA offers no evidence in support of its position other than its conclusory statement that the amendment required changes in its bid which could not be made before the bid opening date. See Grace Industries, Inc., B-220606, Dec. 17, 1985, 85-2 CPD ¶ 682.)

IPA also states that the amendment which was issued to correct defects in the original specifications was itself not clearly written. This ground of protest also is untimely since it was not raised before bid opening. 4 C.F.R. § 21.1(a); Advanced Technology Engineering, Inc., B-219371, Aug. 16, 1985, 85-2 CPD ¶ 186.

Finally, IPA contends that the awardee's bid price (1) is too high because it does not reflect a reduction in the scope of effort called for by the amendment; and (2) is based on unrealistically low labor rates for installation of the equipment being acquired. We see no merit to this position since IPA in essence is arguing that the awardee's bid is both too high and too low. In any event, IPA has provided no evidence in support of its first contention that the awardee's price is too high in light of the amendment. To the extent IPA argues that the awardee's bid is based on unreasonably low labor rates, there is no legal basis on which to object to the submission or acceptance of a below-cost bid. K&P, Inc., B-219608, Aug. 1, 1985, 85-2 CPD ¶ 121.

^{1/} IPA does not indicate when it received the amendment, but states that the amendment was mailed to IPA via Federal Express on Saturday, July 19. We assume this means that IPA received it either that weekend or at the latest on Monday, July 21, the first business day after mailing. In any event, IPA concedes that it was aware of the amendment and the agency's decision not to allow an extension before bid opening on July 25.

The protest is dismissed.

Ronald Berger

Ronald Berger
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